REMARKS

Reconsideration and withdrawal of the rejections of this application and consideration and entry of this paper are respectfully requested in view of the herein amendment and remarks, which place the application in condition for allowance.

The Examiner is thanked for indicating that the rejection of claims 1 and 3-11 under 35 U.S.C. § 103 is withdrawn, and that claims 13 and 14 are allowed.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1, 3-11, 13, and 14 are currently under consideration. Claims 1 and 10 are amended without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

The amendment of claims 1 and 10 are to remove recitation of "solvate" and "hydrate." No new matter is added.

It is submitted that the claims herewith are patentably distinct over the prior art, and these claims are in full compliance with the requirements of 35 U.S.C. §112. The amendments to the claims presented herein are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply to clarify the scope of protection to which Applicants are entitled.

II. THE PROVISIONAL DOUBLE PATENTING REJECTION IS OVERCOME

Claims 1 and 3-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12 and 22 of copending U.S. application Serial No. 10/535,474 in view of Patani *et al.* (Chem Rev 1996, 3147-3176).

Applicants reiterate that the issue of whether there is indeed double patenting is contingent upon the allowed subject matter in both applications. Applicants thereby request that the double patenting rejection be withdrawn or at least held in abeyance until allowable subject matter in both applications is determined. If, upon agreement as to allowable subject matter, it is believed that there is still a double patenting issue, a Terminal Disclaimer as to U.S. application Serial No. 10/535,474 will be considered.

III. THE REJECTION UNDER 35 U.S.C. § 112 IS OVERCOME

Claims 1 and 3-11 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly lacking enablement. The Office Action contended that the specification, while being enabling for solvates in the solution phase, does not reasonably provide enablement for solvates in the isolatable or solid form.

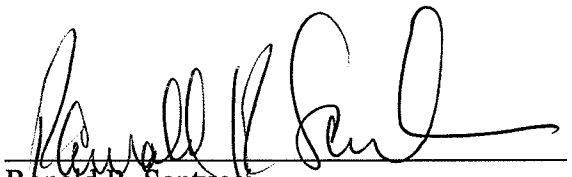
Solely to advance prosecution, Applicants have amended the claims to remove recitation of "solvate" and "hydrate" in the claims, thereby rendering the instant claims enabled. This should not be interpreted as acquiescence to or agreement with the rejection, and Applicants reserve the right to pursue the subject matter as previously claimed in continuing applications. Reconsideration and withdrawal of the enablement rejection are requested.

CONCLUSION

In view of the amendments and remarks herewith, the application is in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP

By: 

Ronald R. Santucci
Reg. No. 28,988
Telephone: (212) 588-0800
Facsimile: (212) 588-0500